



Jigsaw Construction

100 Main Street
Sunville, CA 90000

(900) 123-4567 License Number 000000

PROPOSAL & CONTRACT

Date: _____ Customer: _____ Telephone: _____

Address: _____

We propose to furnish all materials and perform all labor necessary to complete the following:

Home Improvement Contracts:

Putting the pieces together

All of the above work to be completed in a substantial and workmanlike manner according to standard practices for the sum of _____. The entire amount of contract price is due upon completion.

Any alteration or deviation from the above specifications involving extra cost of material or labor will only be executed upon written orders for same, and will become an extra charge over the sum of _____. All agreements must be made in writing.

Contractors are required by law to be licensed and regulated by the Contractors State License Board, which has jurisdiction to investigate complaints against contractors if a complaint is filed within four years of the date of the alleged violation. Any questions concerning the contractor may be referred to the Registrar, Contractors State License Board, P.O. Box 26000, Sacramento, California 95826

Submitted by _____ Contractor's State License No. 000000

You, the buyer, may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction. See the attached Notice of Cancellation form for an explanation of this right.

Celebrating
70 years
of service



CALIFORNIA
CONTRACTORS
STATE LICENSE BOARD
1929-1999

To preserve their rights to file a claim or lien against your property,

I hereby authorize to furnish all materials and labor to complete the work mentioned in the above proposal, for which I agree to pay the amount mentioned in the said proposal, and according to the terms thereof.

Date _____

NOTICE TO OWNER

Lien Law, any contractor, subcontractor, or person or entity who helps to install for his or her work or supplies, home, land, or property where the contractor is in court to obtain payment. If you do not pay, your home, land, and property will be sold, and the proceeds of the sale used to pay the contractor, subcontractors, laborers, or suppliers. This lien can be opened even if you have paid your contractor, subcontractors, laborers, or suppliers. To preserve their rights to file a claim or lien against your property,

certain claimants such as subcontractors or material suppliers are each required to provide you with a document called a Preliminary Notice. Contractors and laborers who contract with owners directly do not have to provide such notice since you are aware of their existence as an owner. A preliminary notice is not a lien against your property. Its purpose is to notify you of persons or entities that may have a right to file a lien against your property if they are not paid. In order to perfect their lien rights, a contractor, subcontractor, supplier, or laborer must file a mechanics' lien with the county recorder which then becomes a recorded lien against your property. Generally, the maximum time allowed for filing a mechanics' lien against your property is 90 days after substantial completion. **OCTOBER 1999**

This booklet contains legal guidelines for home improvement contracts.
This booklet does not contain definitive statements of the law.
If you have questions about the application of the law to specific situations,
you may find it helpful to consult an attorney who is familiar with the construction
business. Other resources are also noted on page 26.



State of California
Gray Davis, *Governor*
Aileen Adams, *Secretary, State and Consumer Services Agency*
Kathleen Hamilton, *Director, Department of Consumer Affairs*
C. Lance Barnett, Ph.D., *Registrar, Contractors State License Board*

© Copyright 1999, California Contractors State License Board

This booklet is an official publication of the State of California. Permission to reprint may be granted only for the complete, and unaltered reproduction of the book as originally published by the Contractors State License Board. No additions or deletions may be made to the content, organization, or format of the publication so long as the state seal, the seal of the Department of Consumer Affairs, the logo of the Contractors State License Board, and any reference to the Board remain part of the printed work.

For information about the Contractors State License Board, call toll-free

1 (800) 321-CSLB (2752)

www.cslb.ca.gov

Introduction



Dear Licensed Contractor or Consumer;

The Contractors State License Board is pleased to announce the 1999 edition of *Home Improvement Contracts: Putting the pieces together*. Although the booklet is primarily geared toward contractors, it is our hope that this comprehensive look at what must be included in home improvement contracts will benefit both consumers and contractors.

This booklet came into being in 1997 as a recommendation of a Contractors State License Board-appointed Classification and Regulation Task Force. The full Board accepted the Task Force's recommendation that an informational booklet on home improvement contracts be developed. The Board found that many contractors and consumers were puzzled over what a contract should contain.

But the Task Force didn't stop with just making a recommendation. The members also acted as curriculum reviewers for the booklet. I would like to thank all of them, which included Board members Nina Tate, who chaired, and John Chalker, who served as vice-chair. Also serving were Sam Abdulaziz, Attorney; Richard Cohen, California Landscape Contractors Association; Bob Harder, North Coast Builders Exchange; Bud Rodgers, Associated General Contractors; Karmi Speece, Plumbing, Heating, Cooling Contractors; and Johnny Zamrzla, Western Pacific Roofing. I would also like to thank the Board's district supervisors for their input and review as the booklet was developed.

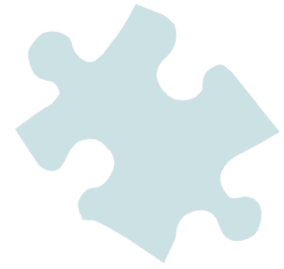
Help the Board build an even better booklet by completing the survey form on page 29. The Board also wants to know what other construction-related topics are of interest to licensed contractors so that appropriate educational materials can continue to be developed.

Two of the Board's major strategic goals concern consumer and contractor education. The goals are to educate consumers to make informed choices about construction services, and to help licensed contractors strengthen their technical, management and service skills to achieve competent performance.

If you are a licensed contractor, the fact that you are reading this booklet shows your commitment to meeting the technical requirements involved in writing home improvement contracts. You are to be congratulated for investing in your business by taking the time to educate yourself on contractor law.

Good luck!

Quick Quiz on Home Improvement Contracts



True/False

- _____ 1. Contracts for \$500 or over can be oral or written; depending on the wishes of the contractor and the consumer.
- _____ 2. It is not necessary to include a license number on the contract, just on any advertising material.
- _____ 3. It is all right to require more than 10% or \$1,000 as a down payment if there are large material costs for the job.
- _____ 4. Materials to be used do not need to be described in great detail because that can be worked out between the contractor and the consumer at a later time.
- _____ 5. It is best if the job is completed for the amount specified in the contract; however, if the contract costs more to build than originally thought the consumer will be required to pay the additional cost.
- _____ 6. It is not necessary to include a statement on the contract about the Contractors State License Board and complaint information.
- _____ 7. The starting and completion dates do not need to be included in the contract.
- _____ 8. The contractor is not required to provide lien information to the consumer prior to signing a contract.
- _____ 9. The three days consumers have to cancel contracts includes Sundays and holidays.
- _____ 10. Change orders are not part of the contract so they don't have to be in writing.

(All false)

Table of Contents



Writing Contracts	4
Before Signing Contracts	8
Informing	11
Scheduling	14
Describing	15
Paying	17
Canceling	21
Resources	26
Survey/Publication Order Form	29

Writing Contracts



General Information on Contracts

con·trac·tor 1: one that contracts or is party to a contract: as
a: one that contracts to perform work or provide supplies
b: one that contracts to erect buildings

con·tract 1: to agree upon

*Why do most
contractors get their
licenses revoked?*

*The top reasons
have to do with poor
workmanship, job
abandonment, and
various contract
problems—most
commonly for
charging the client
in excess of the
contracted job
amount.*

By definition, and as contractors already know, contractors contract. It's an essential part of what contractors do. And the essential meaning of contract is "to agree upon." A contract is an *agreement* between two or more people that the law will enforce.

That's why the Contractors State License Board says that a home improvement contract is one of the most important tools a contractor uses. It's a tool to ensure that all parties to the contract *agree*. When contractors and consumers *disagree*, it's timely and costly to all involved.

Home improvement contracts are a tool to make sure that contractors and consumers agree on the work to be performed: how it will be done, when it will be done, what materials will be used, and how much it will cost. A well written contract is also a tool that helps ensure enforcement of the agreement, if necessary. Like most other tools, a contract should be top quality and well constructed, with all working parts.

A contract can be oral or written. For home improvement contracts over \$500, they must be written. In most cases, it's a good idea to put a contract in writing. It shows that there was a contract, and it proves what things you and the other party agreed to do. The old axiom is true—"A verbal contract is as good as the paper it's not written on."

This booklet will describe what ALL home improvement contracts MUST have—all the pieces of the puzzle, so to speak—and then other information contractors should know. It also includes a "top ten" list of contract problems to watch out for, as well as a checklist of the essential elements of home improvement contracts. Finally, a resource list of where contractors can obtain standard contract forms is included.

What Is Home Improvement?

Home improvement is the repairing, remodeling, altering, converting, modernizing or adding to residential property.

Examples of home improvement are the construction, erection, replacement or improvement of:

- ◆ driveways
- ◆ swimming pools, including spas and hot tubs
- ◆ terraces
- ◆ patios
- ◆ awnings
- ◆ gazebos
- ◆ storm windows
- ◆ landscaping
- ◆ fences
- ◆ porches
- ◆ kitchens
- ◆ baths
- ◆ garages
- ◆ basements
- ◆ other structural improvements on land adjacent to a dwelling

Here are some more specific examples of what home improvement IS, and what it IS NOT.

HOME IMPROVEMENT IS	HOME IMPROVEMENT IS NOT
Installation of a sprinkler system	Lawn mowing
Building a new addition to an existing residence	Building a doghouse
Installing a carpet	Steam cleaning a carpet
Trimming trees	Watering trees
Repairing a chimney	Sweeping a chimney
Building a pool	Cleaning a pool

(Business and Professions Code 7151)

“Top Ten” Problems with Home Improvement Contracts

*In no particular order,
here are frequently seen
problems with home
improvement contracts:*

*Notice regarding
Registrar’s address
missing*

*Excessive down
payment requested*

*Equipment to be used or
installed not detailed, and
materials to be used not
described specifically
enough*

*Notice to owner regarding
liens not included*

*Job to be completed is not
clearly stated and
described*

*Right to cancel notice
missing*

*Bid not figured out
carefully and/or
completely*

*Change orders not
included*

*Old notices used with old
addresses and
noncompliant language*

*Notice regarding owner’s
right to require a
performance and payment
bond not included*

What is a Home Improvement Contract?

A home improvement contract is

an oral or written agreement

BETWEEN a contractor or salesperson

AND either a residential owner or a tenant

for the performance of a home improvement.

If the total cost of the project exceeds \$500, by law the contract MUST be in writing. The total cost includes labor, services, and materials.

A home improvement contract must include elements specified in Business and Professions Code Section 7159 and elsewhere. This booklet outlines those elements.

Business and Professions Code 7151.2

Laundry List of Items Required by Law in Home Improvement Contracts

For a clean contract, here's a laundry list of each item that state law requires be in home improvement contracts. Contractors are also required to provide specified notice(s) to consumers PRIOR to entering contracts (see page 8). *Business and Professions Code 7159*



Informing

- ___ Contractor's name, address and license number
- ___ Name and registration number of salesperson (if applicable) who solicited or negotiated the contract (see page 11)
- ___ Statement regarding where to file a complaint (see page 11)
- ___ Arbitration Notice if the contractor is requiring private arbitration (see page 13)
- ___ Notice required for a lien contract offered by door-to-door sale that is secured by a lien on real property (see page 8)



Scheduling

- ___ Approximate starting and completion dates
- ___ Notice of consequences if contractor fails to substantially commence work within 20 days of start date without lawful excuse (see page 14)
- ___ Statement of what constitutes substantial commencement of work



Describing

- ___ Description of the work to be done, including materials and equipment to be used or installed (see page 15)
- ___ For swimming pools: plan and scale drawing show shape, size, dimensions and construction and equipment specifications for a swimming pool
- ___ Any changes or change orders after the original contract has been signed (see page 15)
- ___ Clear description of any other matters agreed to by the parties



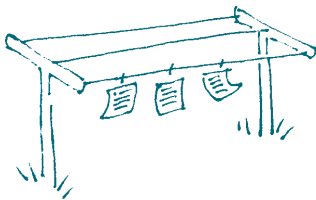
Paying

- ___ Price agreed upon to do the work
- ___ Down payment is only 10 percent of the total cost of the project or \$1,000, whichever is less (2 percent or \$200 for swimming pools) (see page 17)
- ___ Schedule of payments in dollars and cents (see page 17)
- ___ Notice to owner regarding mechanics' liens (see page 10)
- ___ Contractor statement regarding lien releases upon satisfactory payment for work performed (see page 18)
- ___ Notice to owner requiring right to a bond or joint control (see page 19)

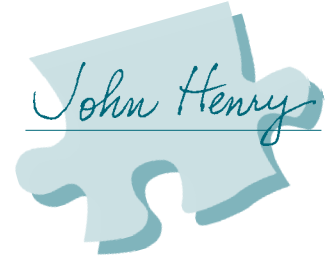


Canceling

- ___ Statement of right to cancel (see page 25)



Before Signing Contracts



Before You Enter into a Home Improvement Contract

Consent

Both parties to a contract must give their consent, which must be true and freely given. If one party's consent was obtained through fraud (deception or trickery), the contract can be canceled by the other party.

A contract can also be canceled if it is signed under duress or undue influence. Examples of duress are threats of or actual physical harm. Undue influence occurs when a person does not freely exercise his or her own free will as a result of another person's influence.

Civil Code Sections 1550, 1567

Notice Required for Lien Contracts

The following notice, in 18-point boldface type, must accompany any home improvement contract *offered by door-to-door sale* that contains or is secured by a lien on real property.

“Warning to buyer: if you sign the contract which accompanies this notice, you will be putting up your home as security. This means that your home could be sold without your permission and without any court action if you miss any payment required by this contract.”

Business and Professions Code 7159.1 & 7159.2

Plans and Specifications

Most jobs require plans and specifications which describe layout, sizes, locations, materials, allowances, etc. It is important that both the contractor and the homeowner critically review both the plans and the specifications to ensure a clear understanding of the home improvements and of each party's commitments and obligations. A review of preliminary plans and specifications should occur prior to the signing of any contract. (See page 15.)

Hazardous Materials

Occasionally, a contractor starts a project without knowledge of the existence of hazardous materials and then discovers them during construction. When this occurs, the contractor must immediately notify the homeowner and stop the work in the affected area. The homeowner is then responsible for complying with local codes and ensuring the hazardous materials are properly abated. In some cases the contractor may be licensed to perform the abatement. It is important to know that the contractor cannot resume work in the affected area until the abatement is completed and the contractor is notified in writing.

License & Mechanics' Lien Information

State law requires that all contractors give the following information on licensing and on mechanics' liens BEFORE a contract is signed.

License Information

The following notice must be provided to any person with whom he or she is contracting to perform work on residential property with four or fewer units. The disclosure and notice may be provided in a bid, estimate, or other document prior to entering into a contract.

The following must be either in capital letters in 10-point roman boldface type or in contrasting red print in at least 8-point roman boldface type:

“State law requires anyone who contracts to do construction work to be licensed by the Contractors State License Board in the license category in which the contractor is going to be working—if the total price of the job is \$500 or more (including labor and materials).

“Licensed contractors are regulated by laws designed to protect the public. If you contract with someone who does not have a license, the Contractors State License Board may be unable to assist you with a complaint. Your only remedy against an unlicensed contractor may be in civil court, and you may be liable for damages arising out of any injuries to the contractor or his or her employees.

“You may contact the Contractors State License Board to find out if this contractor has a valid license. The Board has complete information on the history of licensed contractors, including any possible suspensions, revocations, judgments, and citations. The Board has offices throughout California. Please check the government pages of the White Pages for the office nearest you or call 1-800-321-CSLB for more information.”

This is 10-point roman boldface type.

This is 8-point roman boldface type.

(“Roman” means it is not italic.)

Notice Required To Be Given by Disciplined Contractors

A contractor who has had his or her license suspended or revoked due to disciplinary action two or more times within an eight-year period must provide a notice to consumers prior to entering into home improvement contracts for residential property with four or fewer units. This notice is required whether or not the suspension or revocation was stayed.

The disclosure must be either in capital letters in 10-point roman boldface type or in contrasting red print in at least 8-point roman boldface type.

The notice must include information on any citation, license suspension, or license revocation during the last four years resulting from any violation of any provisions of this chapter by the contractor, or any complaint or legal action relating to conduct regulated under this chapter that resulted in an unfavorable judgment against the contractor.

Business and Professions Code Section 7030

Notice to Owner/ Mechanics' Liens

State law also requires that contractors provide the Notice to Owner on page 10 regarding mechanics' liens. You may contact a CSLB district office to obtain a copy, or you may duplicate the form in this booklet. For additional information on liens, consult the “Managing a Business” section at the end of the *California Contractors License Law and Reference Book*. (See page 28 for ordering information.)

SECTION 7018.5 of the Business and Professions Code requires that each contractor licensed under this chapter, prior to entering into a contract with an owner for work specified as home improvement or swimming pool construction pursuant to Section 7159, give a copy of the following Notice to Owner to the owner, the owner's agent, or the payer. The failure to provide this notice as required shall constitute grounds for disciplinary action. (See page 10.)

NOTICE TO OWNER

“Under the California Mechanics’ Lien Law, any contractor, subcontractor, laborer, supplier, or other person or entity who helps to improve your property, but is not paid for his or her work or supplies, has a right to place a lien on your home, land, or property where the work was performed and to sue you in court to obtain payment.

This means that after a court hearing, your home, land, and property could be sold by a court officer and the proceeds of the sale used to satisfy what you owe. This can happen even if you have paid your contractor in full if the contractor’s subcontractors, laborers, or suppliers remain unpaid.

To preserve their rights to file a claim or lien against your property, certain claimants such as subcontractors or material suppliers are each required to provide you with a document called a “Preliminary Notice.” Contractors and laborers who contract with owners directly do not have to provide such notice since you are aware of their existence as an owner. A preliminary notice is not a lien against your property. Its purpose is to notify you of persons or entities that may have a right to file a lien against your property if they are not paid. In order to perfect their lien rights, a contractor, subcontractor, supplier, or laborer must file a mechanics’ lien with the county recorder which then becomes a recorded lien against your property. Generally, the maximum time allowed for filing a mechanics’ lien against your property is 90 days after substantial completion of your project.

TO INSURE EXTRA PROTECTION FOR YOURSELF AND YOUR PROPERTY, YOU MAY WISH TO TAKE ONE OR MORE OF THE FOLLOWING STEPS:

- (1) Require that your contractor supply you with a payment and performance bond (not a license bond), which provides that the bonding company will either complete the project or pay damages up to the amount of the bond. This payment and performance bond as well as a copy of the construction contract should be filed with the county recorder for your further protection. The payment and performance bond will usually cost from 1 to 5 percent of the contract amount depending on the contractor’s bonding ability. If a contractor cannot obtain such bonding, it may indicate his or her financial incapacity.**
- (2) Require that payments be made directly to subcontractors and material suppliers through a joint control. Funding services may be available, for a fee, in your area which will establish voucher or other means of payment to your contractor. These services may also provide you with lien waivers and other forms of protection. Any joint control agreement should include the addendum approved by the registrar.**
- (3) Issue joint checks for payment, made out to both your contractor and subcontractors or material suppliers involved in the project. The joint checks should be made payable to the persons or entities which send preliminary notices to you. Those persons or entities have indicated that they may have lien rights on your property, therefore you need to protect yourself. This will help to insure that all persons due payment are actually paid.**
- (4) Upon making payment on any completed phase of the project, and before making any further payments, require your contractor to provide you with unconditional “Waiver and Release” forms signed by each material supplier, subcontractor, and laborer involved in that portion of the work for which payment was made. The statutory lien releases are set forth in exact language in Section 3262 of the Civil Code. Most stationery stores will sell the “Waiver and Release” forms if your contractor does not have them. The material suppliers, subcontractors, and laborers that you obtain releases from are those persons or entities who have filed preliminary notices with you. If you are not certain of the material suppliers, subcontractors, and laborers working on your project, you may obtain a list from your contractor. On projects involving improvements to a single-family residence or a duplex owned by the individuals, the persons signing these releases lose the right to file a mechanics’ lien claim against your property. In other types of construction, this protection may still be important, but may not be as complete.**

To protect yourself under this option, you must be certain that all material suppliers, subcontractors, and laborers have signed the “Waiver and Release” form. If a mechanics’ lien has been filed against your property, it can only be voluntarily released by a recorded “Release of Mechanics’ Lien” signed by the person or entity that filed the mechanics’ lien against your property unless the lawsuit to enforce the lien was not timely filed. You should not make any final payments until any and all such liens are removed. You should consult an attorney if a lien is filed against your property.”

Informing



Informing

Required Notice(s) PRIOR to Contracting

Remember, BEFORE entering into a contract, contractors must provide the notice(s) described on pages 8-9.

Contract in Writing

Home improvement contracts of \$500 or more must be in writing. Since both contractors and consumers are bound by everything set down in the contract, contracts should be read carefully before signing. A judge will usually assume that all agreements, both oral and written, are included in the written contract.

Name and Registration Number of Salesperson (if Applicable)

Contracts must include this information. A home improvement salesperson is employed by a licensed contractor to solicit and execute contracts outside the contractor's normal place of business. A salesperson may work for more than one contractor but must have a separate home improvement salesperson registration for each contractor. Each registration must be renewed every two years.

Statement Regarding Where To File a Complaint

Every contract must include the following statement on all written contracts. The statement must be in at least 10-point type:

“Contractors are required by law to be licensed and regulated by the Contractors State License Board, which has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or omission is filed within four years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within 10 years of the date of the alleged violation. Any questions concerning the contractor may be referred to the Registrar, Contractors State License Board, Post Office Box 26000, Sacramento, California 95826.”

Warranties

Contractors should be advised of the following information on CSLB complaint law should they wish to include an express, written warranty as part of their contract.

For patent or readily observable defects, California law limits the period within which a complaint may be filed against a contractor to four years from the date when the act or omission occurred. This statute of limitations may be extended if there is an express, written warranty issued by the contractor. If such a warranty has been

This is 10-point roman
boldface type.

This is 8-point roman
boldface type.

(“Roman” means it is
not italic.)

breached by the contractor, the CSLB has authority to act on a complaint during the entire duration of the warranty. However, the CSLB has no authority to enforce a warranty given by a manufacturer or material supplier. A ten year statute of limitations exists for certain latent defects in construction.

Arbitration

If contractors want potential disputes to be solved via *private* arbitration, the arbitration notice on page 13 must be used. Be advised, however, that including such a statement will disallow access to CSLB's arbitration program.

The CSLB offers two arbitration programs: a mandatory program for disputes involving alleged damages of \$5,000 or less, and a voluntary program for disputes involving damage allegations of between \$5,000 and \$50,000.

Disputes must comply with certain criteria in order to qualify for a CSLB arbitration program:

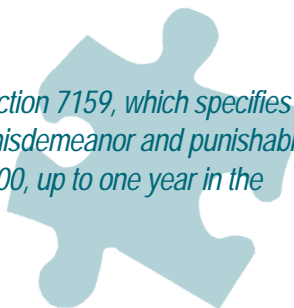
- ◆ the contractor's license must be in good standing at the time of the alleged violation and at the time of the referral to arbitration;
- ◆ the contractor cannot have a record of prior violations; and
- ◆ the parties cannot have previously agreed to private arbitration in the contract or elsewhere.

CSLB arbitration is fast (about 120 days) and informal, and all decisions are binding and enforceable in court. The Board provides the arbitrator (who is an expert in construction matters) and one expert witness free of charge. It also pays all administrative fees.

For more information on arbitration, contact the CSLB by calling 1 (800) 321-CSLB (2752) and order the free publications, *Mandatory Arbitration Program Guide* and *Voluntary Arbitration Program Guide*.

Business and Professions Code Sections 7159, 7030

A violation of Business and Professions Code section 7159, which specifies home improvement contract requirements, is a misdemeanor and punishable by a fine of not less than \$100 or more than \$5,000, up to one year in the county jail, or both.



Arbitration Notice

If a contractor wishes to include a provision for private arbitration in a printed contract, it shall be set out in at least 10-point roman boldface type or in contrasting red print in at least 8-point roman boldface type.

If the provision is included in a typed contract, it shall be set out in capital letters.

Immediately before the line or space provided for the parties to indicate their assent or nonassent to the arbitration provision, the following shall appear:

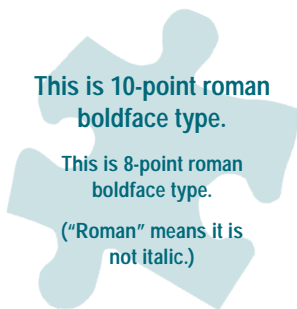
“ARBITRATION OF DISPUTES

“NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE ‘ARBITRATION OF DISPUTES’ PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE ‘ARBITRATION OF DISPUTES’ PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE BUSINESS AND PROFESSIONS CODE OR OTHER APPLICABLE LAWS. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.

“WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE ‘ARBITRATION OF DISPUTES’ PROVISION TO NEUTRAL ARBITRATION.”

An arbitration provision that does not comply with Business and Professions Code Section 7191 may not be enforceable against any person other than the licensee.

Business and Professions Code Section 7191



Scheduling



Commencement of Work— Starting the Job

All home improvement contracts must include:

- ◆ the approximate date on which construction is to begin;
- ◆ the approximate date on which all construction is to be completed (not number of working days);
- ◆ what constitutes substantial commencement of the work; and
- ◆ a notice that failure of the contractor without lawful excuse to substantially commence work within 20 days from the approximate date specified in the contract when work will begin is a violation of the Contractors License Law.

The dates need to be approximate only, since external factors such as the weather, or the availability of supplies might cause delays.

Business and Professions Code Section 7159

Describing



Description of the Work

The contract must include a description of the work to be done; the materials to be used, and the equipment to be used or installed. Also, a plan and scale drawing showing the shape, size dimensions, and construction and equipment specifications for a swimming pool and for other home improvements must also be included as part of the contract. Make sure the contract includes everything that is agreed to, up to and including complete cleanup and removal of debris and materials, and special requests like saving lumber for firewood or saving certain materials or appliances.

Remember, the word “contract” means “to agree.” The more effort that is spent in spelling out in as much detail as possible what will be done on the job, the less the chance that there will be a misunderstanding.

Therefore, the contract should be as specific as possible regarding all materials to be used, such as the quality, quantity, weight, color, size, or brand name as it may apply.

For example, the contract should say “install oak kitchen cabinets, manufactured by Company XYZ, model 01381A, as per the plan,” not just “install kitchen cabinets.”

Change Orders

Disputes frequently arise over “changes” or “extras.” First of all, in order to determine if something is an extra or outside the scope of the original agreement, contractors must be able to accurately determine what the original agreement says. If the original agreement is well defined and in writing, it will be much easier to determine if something is an extra.

Change orders are required to perform extra or changed work. Change order forms become a part of the contract and must clearly set forth the scope of the work and the price to be charged. They must be in writing and must include:

- ◆ the contractor’s name, address, and license number;
- ◆ signatures of both parties to the contract;
- ◆ approximate dates when the work will begin and be completed;
- ◆ a legal description of the location where the work will be done; and
- ◆ include the Notice to Owner mechanics’ lien statement (see page 10).

Business and Professions Code Section 7159(h) , 7164



Describing the job — the good, the bad and the ugly

<i>THE GOOD</i>	<i>THE BAD</i>	<i>THE UGLY</i>
<i>Install kitchen cabinets manufactured by Company XYZ, model ABC, per plan</i>	<i>install oak country style kitchen cabinets</i>	<i>install some cabinets</i>
<i>Paint indoor entry (per plan) using brand X paint, color ABC, two coats, with preparation described in next paragraph.</i>	<i>prep and paint entryway with blue paint</i>	<i>paint the entry</i>
<i>Brand X kitchen faucet in style ABC and color BCS.</i>	<i>kitchen faucet replaced if necessary</i>	<i>kitchen fixtures</i>



Paying



Paying

Agreed Price

All contracts must include the price agreed upon for the work. Remember that \$500 is the threshold at which the requirements for home improvement contracts must be met.

By law, the job must be completed for the agreed upon contract price.

If the contract price is to be changed, that **MUST** be accomplished via written change orders (see page 15), which become a part of the contract. Not completing the job for the contract price is a violation of Business and Professions Code Section 7113, and constitutes a cause for disciplinary action. In fact, most license revocation actions include a reference to a violation of this code section.

Down Payment

If the payment schedule contained in the contract provides for a down payment to be paid to the contractor by the owner or the tenant before the commencement of work, the down payment shall not exceed one thousand dollars (\$1,000) or 10 percent of the contract price for home improvements, excluding finance charges, whichever is less. There are no exceptions for special order materials.

The maximum down payment for swimming pools is two hundred dollars (\$200) or 2 percent of the contract price, whichever is less. With respect to a swimming pool contract, the final payment may be made at the completion of the final plastering phase of construction, provided that any installation or construction of equipment, decking, or fencing required by the contract is also completed.

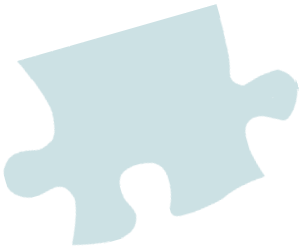
Schedule of Payments

A home improvement contract must include the schedule of payments showing the amount of each payment as a sum in dollars and cents. It should be specifically referenced to the amount of work or services to be performed and to any materials and equipment to be supplied.

Payments to the contractor cannot exceed the value of the work performed, except for the initial down payment.

The down payment for home improvements must not exceed \$1,000 or 10% of contract price, whichever is less.

For a swimming pool, the maximum down payment is \$200 or 2% of the contract price, whichever is less.



If the contractor has not begun the work within 20 days of the contract start date, the payment schedule specified in the contract shall be postponed for the period of time equivalent to the time between when substantial commencement was to have occurred and when it actually occurred.

Sales Commission

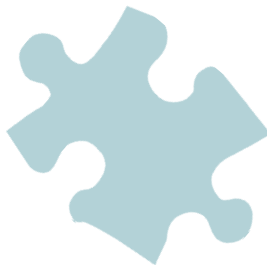
If the contract provides for a payment of a salesperson's commission out of the contract price, that payment shall be made on a pro rata basis in proportion to the schedule of payments made to the contractor.

Liens

The law requires that prior to entering into a contract with an owner, a Notice to Owner (see page 10) be provided. The contract must state that upon satisfactory payment being made for any portion of the work performed, the contractor shall furnish a full and unconditional release from any claim or mechanics' lien for that portion of the work for which payment has been made.

Any home improvement contract *offered by door-to-door sale* that contains or is secured by a lien on real property must be accompanied by the notice required for lien contracts (see page 8).

For more information on liens, consult the "Managing a Business" section at the end of the *California Contractors License Law and Reference Book*. (See page 28 for ordering information.)





Bonds

The contract must contain a notice stating that the owner or tenant has the right to require the contractor to have a performance and payment bond. This notice is contained in the Notice to Owner. The notice must be in close proximity to the signatures of the owner and contractor and in at least 10-point type.

Lien notice requirements for home improvement contracts do not apply if:

- ◆ the contractor furnishes a performance and payment bond, lien and completion bond, bond equivalent or joint control approved by the Registrar of Contractors, which covers full performance and completion of the contract and the bonds; or
- ◆ joint control is furnished by the contractor; or
- ◆ when parties agree for full payment to be made upon or for a schedule of payments to commence after satisfactory completion of the project.

A *joint control* is a builder's construction control service which acts as an escrow holder of a consumer's money. A good joint control company manages the disbursement of funds to prevent the contractor from being paid more than the value of the work already completed. A joint control also safeguards the consumer's property from mechanics' liens by requiring the contractor to supply lien releases from subcontractors and suppliers as progress payments are made.

A joint control normally includes an analysis of the contract and building plans or specifications, breakdowns of cost, and the preparation of an account from which the funds will be disbursed on regularly scheduled progress payments. An addendum must be incorporated into joint control agreements in order for any joint control company to be considered approved by the Registrar of Contractors (see page 20 for addendum). The addendum should prove beneficial to both contractors and consumers.

The Contractors State License Board does not license, have any legal control or maintain lists of approved joint control companies. Approval is implicit if the addendum is used.

Business and Professions Code Sections 7159 (d)(f)(e), 7113 and 7018.5

JOINT CONTROL ADDENDUM
Addendum to Control Agreement/Escrow Instructions

This addendum is hereby incorporated into and becomes a part of the Control Agreement attached hereto dated _____.

1. Should any of the terms or provisions of the contract between Owner and Contractor or of the contract into which this Addendum is incorporated conflict with any of the terms or provisions of this Addendum, then the terms of this Addendum shall prevail.
2. Control agrees to control and disburse funds in the following manner:
 - a) Supplier or sub-contractor submits to contractor duplicate copies of invoices requesting payment.
 - b) If payment is justified, based on work completed, control accepts disbursement order or voucher in favor of payee for net amount.
 - c) After signing by the contractor and the payee concerned, order for payment together with copies of invoices, unconditional lien releases and/or other substantiating data is delivered or mailed to the Control for payment.
3. Prior to issuing payment, Control agrees to verify:
 - a) That all vouchers have authorized signatures.
 - b) That adequate unconditional lien releases have been submitted in writing.
 - c) That sufficient funds are on hand to pay the specific invoice(s) submitted.
4. Prior to issuing final payment, Control agrees to verify that project has passed final inspection by local building authorities, unless the scope of the contracted project does not require a final inspection.
5. After verification of the above, checks shall be made out payable to the supplier or subcontractor, or to the prime contractor and supplier or subcontractor, jointly.
6. Control agrees that in no event shall it disburse payments in excess of 100 percent of the value of the work performed on the project at any time, excluding finance charges.
7. The funds from this account shall be used only for the project described in the contract. Control warrants that work and material paid for by Control has been provided.
8. If this agreement is terminated for any reason prior to disbursement of all monies payable under the contract between Owner and Contractor, all subsequent disbursements to Contractor shall conform to the requirements of Section 7159 of the Business and Professions Code.

NOTE: Section 7159 of the Business and Professions Code requires that all change orders be in writing and signed by all parties.

SO AGREED this ____ day of _____, 19____.

CONTROL

OWNER

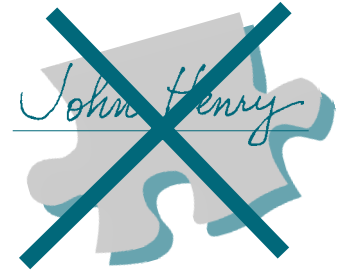
CONTRACTOR

OWNER

Contractors who furnish a joint control as part of the terms of a home improvement contract should be aware that the law prohibits them from having any financial or other interest in the joint control company. Also, it is the contractor's responsibility to determine whether or not the above addendum is included in the control agreement.

If an approved joint control or bond covering the complete contract is not furnished with a home improvement contract, the contractor may not require a down payment in excess of \$1,000 or 10 percent of the total contract price, whichever is less. The contract must also contain a schedule of payments stated in dollars and cents and specific references to the work or services to be performed or the materials and equipment to be supplied. Also, no payments other than the down payment can be in excess of the value of the work (excluding finance charges) performed at any time on the project.

Canceling



There are three cancellation provisions that contractors should be familiar with:

1. The Home Solicitation Sales Act
2. The Federal Truth in Lending Act
3. Business and Professions Code Section 7163

1. Home Solicitation Sales Act

Home improvement contracts, and virtually any other consumer transaction involving \$25 or more which takes place in the buyer's home or away from "appropriate trade premises," can be canceled by the buyer, without penalty or obligation, **within three business days after the buyer signs the contract.**

To cancel, the buyer need only give the contractor written notice of the buyer's intent not to be bound by the contract. If the contractor has not complied with certain notice requirements, the cancellation period begins when the contractor has complied (see discussion below).

The cancellation provisions are most commonly applied to sales made in the buyer's home, but the **test is whether the contract or offer is made somewhere other than the seller's place of business.**

These provisions apply whether the buyer initiated contact with the contractor or vice versa. They apply where there is no financing involved, or in the fairly rare case where the financing is through a retail installment contract.

Exceptions to the Home Solicitation Sales Act are noted below.

Contract and Notice Must Be in Writing

In this discussion, **bold** type indicates requirements that a contract must meet in order to avoid extending the cancellation period beyond three business days.

The buyer's **contract or offer to purchase must be in writing, and must be in the same language as is principally used in the oral sales presentation** (for example, Spanish). **The contract or offer must be dated and signed by the buyer, and must state on the first page the name and address of the contractor to which the Notice of Cancellation is to be sent, and the date on which the buyer signed the contract or offer.**



The contract or offer must contain a **conspicuous, statutorily-prescribed notice of the buyer's right to cancel, which must be located near the space for the buyer's signature. This notice must state:**

"You, the buyer, may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction. See the attached Notice of Cancellation form for an explanation of this right."

The contractor must give the buyer a copy of the contract or offer and the statutorily-required Notice of Cancellation forms, as described in the paragraphs below.

Form of Cancellation Notice

The contractor must give the buyer duplicate, completed, Notice of Cancellation forms, in the same language as used in the contract, which contain a statutorily-prescribed Notice of Cancellation (see page 25 for the notice). These forms must be attached to the contract or offer, and must be easily detachable, so that the buyer can use the form itself to give the contractor notice of the buyer's decision to cancel. At the time the contract or offer is executed, the contractor also must orally inform the buyer of the buyer's right to cancel.

Notice of Cancellation and Cancellation Period

The buyer may cancel the contract or offer until midnight of the third business day after the day on which the buyer signed the instrument. "Business day" means any calendar day except Sundays and specified holidays.

However, if the contractor has **not complied** with the foregoing requirements described in bold type, the buyer may cancel the contract or offer **at any time** until the contractor has complied with those requirements.

A buyer who desires to cancel need not use the form provided by the contractor. In order to cancel, the buyer's notice of cancellation need only be in writing, and need only express the buyer's intent not to be bound by the contract or offer.

The buyer's notice must be sent to the contractor at the address specified in the agreement or the offer. If given by mail, the buyer's notice is effective when it is deposited in the mail, properly addressed, with postage prepaid. The buyer also may cancel by sending a telegram to the contractor's address.

Transactions Not Covered by the Home Solicitation Sales Act

The following are the most important exceptions to the Act:

- 1) Contracts with a licensed contractor for repair services, if (1) the contract price is less than \$100, contract contains a written and dated statement, signed by the buyer, that he or she initiated the negotiations.

- 2) Contracts for emergency repairs or services which are necessary for the immediate protection of people or property, where the buyer initiates the contract and gives the contractor a separate signed and dated personal statement which describes the situation, and which expressly acknowledges and waives the buyer's right to cancel.
- 3) Any transaction which is subject to rescission by the buyer under the federal Truth-in-Lending Act because it involves a security interest in the buyer's principal dwelling (discussed below).

2. Truth In Lending Act

If the home improvement is to be financed and involves a security interest in the buyer's home, the Truth in Lending (TIL) Act's three-business-day right of rescission (cancellation) probably applies.

Transactions Covered

The TIL rescission right arises in a consumer credit transaction where a nonpurchase lien or security interest is taken in the consumer's principal dwelling, or where a security interest in the dwelling may arise by operation of law (e.g., a mechanics' or materialman's lien). The credit must be extended to a natural person for personal, family or household purposes by a creditor who regularly extends consumer credit (this can be a contractor or a lender).

Major exceptions to the rescission provisions include loans to finance the construction or purchase of a home, and refinancings of the same property by the same creditor with no new advance of funds.

Cancellation Right

Each consumer whose ownership interest is or will be subject to the security interest has the right to rescind the transaction until midnight of the third business day after:

- (1) consummation of the contract,
- (2) the creditor's delivery of the required notice of the right to rescind, or
- (3) the creditor's delivery of all material disclosures, whichever occurs **last**. ("Material disclosures" include the annual percentage rate, the finance charge, the amount financed, and other key loan terms.)

If the required notice or material disclosures are not delivered, the right to rescind generally expires three years after consummation.



3. Business and Professions (B&P) Code Section 7163

Application

B&P Section 7163 complements and supplements the Truth in Lending Act's rescission provisions described above. The second applies in **any** of the following situations:

- 1) if the obtaining of a loan for all or a portion of the contract price for a home improvement contract is a condition precedent to the contract;
- 2) if the contractor provides financing or helps the buyer in any manner to obtain a loan; *or*
- 3) if the contractor refers the buyer to a lender or to any other person for the purpose of arranging a loan.

If **one** of these conditions is present, the contract is not enforceable against the buyer unless *all* of the following requirements are satisfied:

- (1) the third party, if any, agrees to make the loan;
- (2) the buyer agrees to accept the loan or financing; and
- (3) the buyer does not rescind the loan or financing transaction as permitted by the Truth in Lending Act, if that Act's provisions are applicable.

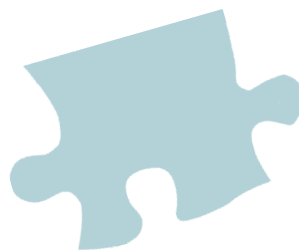
Exceptions to B&P Section 7163

In general, the buyer's waiver of any rights under B&P Section 7163 is void and unenforceable.

A waiver is permitted, however, to the extent that the contract is for emergency repairs or services which are necessary for the immediate protection of people or property. In this situation, the buyer must give the contractor a signed and dated personal statement which describes the emergency, states that the contractor has informed the buyer of the buyer's right to cancel under B&P Section 7163, and states that the buyer waives those rights. **The waiver must be signed by each owner of the property. Waivers on printed forms are void and unenforceable.**

Swimming Pool Contracts

B&P Section 7165 allows use of substitute provisions in the case of a swimming pool contract financed by a third-party lender.



NOTICE OF RIGHT TO CANCEL

Notice of Cancellation

(enter date of transaction)

You may cancel this transaction, without any penalty or obligation, within three business days from the above date.

If you cancel, any property traded in, any payments made by you under the contract or sale, and any negotiable instrument executed by you will be returned within 10 days following receipt by the seller of your cancellation notice, and any security interest arising out of the transaction will be canceled.

If you cancel, you must make available to the seller at your residence, in substantially as good condition as when received, any goods delivered to you under this contract or sale, or you may, if you wish, comply with the instructions of the seller regarding the return shipment of the goods at the seller's expense and risk.

If you do make the goods available to the seller and the seller does not pick them up within 20 days of the date of your notice of cancellation, you may retain or dispose of the goods without any further obligation.

If you fail to make the goods available to the seller, or if you agree to return the goods to the seller and fail to do so, then you remain liable for performance of all obligations under the contract.

To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice, or any other written notice, or send a telegram to:

(name of seller)

at _____
(address of seller's place of business)

not later than midnight of _____
(date)

I hereby cancel this transaction _____
(date)

(buyer's signature)

Resources



For assistance with your home improvement contract, consider the following resources.

Contractors State License Board



You may call a deputy registrar of the Contractors State License Board with questions regarding requirements of home improvement contracts at any of CSLB's district offices or branches. For the office nearest you, call 1 (800) 321-CSLB (2752), or contact our website at www.cslb.ca.gov.

Please remember, however, that deputies will only be able to answer specific questions regarding contractor law on home improvement contracts as specifically defined by Business and Professions Code Section 7159.

Also, the CSLB cannot and does not give legal advice as to how the courts or an arbitrator would regard a specific matter. The CSLB staff can only provide information about how the CSLB interprets the law for its own purposes. For example, the CSLB staff can give an interpretation on whether a particular action by a contractor would constitute a violation that might lead to action by the CSLB.

Any other questions will need to be researched through one of the other resources available.

Books

The *California Contractors License Law and Reference Book* (see page 28 for ordering information from the Automated Phone Response System) includes all of the various legal code sections referenced throughout this booklet. It also includes sections on "Managing Your Business" and on "Home Improvement Contracts."

Trade Associations

Printed standard forms of agreements used in the industry are available from:

- ◆ many of the contractor associations (i.e., Associated General Contractors);
- ◆ associations particular to the various trades (i.e., California Landscape Contractors Association); and also from
- ◆ various Builders Exchanges.

Stationery Stores

Printed standard forms are also available from various stationery stores. When purchasing or obtaining a standard form, you should carefully check it to make sure it contains all the current legal requirements.

Legal Assistance

A continuing relationship with an attorney familiar with the construction business is helpful. It is a good idea to have an attorney check arrangements for individual jobs which might not quite fit a standard form.

The Internet



Another source of information on contracting and the CSLB is the Internet. Information is available in the following categories:

- ◆ License and application status information
- ◆ Licensing and exam information
- ◆ How to file a complaint
- ◆ Information for disaster victims
- ◆ Order forms and applications
- ◆ CSLB office locations
- ◆ CSLB publications and pamphlets
- ◆ New topics, new laws, pending legislation

Contractors and the public can access us through our Internet address:

www.cslb.ca.gov

Automated Phone Response System



The Automated Phone Response System (APRS) is an automated, toll-free number, 1 (800) 321-CSLB (2752), for obtaining information, forms, publications and other valuable assistance pertaining to contracting and the Contractors State License Board. The following categories identify the kinds of information and materials available through the APRS, followed by the number to press on your touch-tone phone to gain access to or information about each category.

License Maintenance

License renewal	2151
Adding a class	21521
Asbestos certification	21522
Hazardous substances removal	21523
License structure	2153
Changing business name and address	21541
Changing officers of the corporation	21542
Disassociation of qualifying person	21543

(Continued)

Automated Phone Response System

Continued

Replacing the qualifying person	21544
Inactivating a license	21551
Reactivating a license	21552
Canceling a license	2156
Contractor's bonds	21571
Workers' Compensation	21572
Civil Court judgments	2158

Ordering Forms

Application for contractors license	241
License renewal form	243
Reactivation form	243
Inactivation form	243
Add class/RME/O replacement application ...	244
Joint venture application	244
Asbestos certification application	245
Hazardous waste application	245
Name/address change form	246
Change officers form	246
Disassociation form	246
Bond forms/cash alternative forms	247
Qualifier bond exemption form	247
Workers' Compensation exemption form	248

Ordering Publications

<i>Asbestos: A Contractor's Guide and Open Book Exam</i>	32
<i>Blueprint for Becoming a California Licensed Contractor</i>	32
<i>California Contractors License Law and Reference Book</i>	33

Survey

The Contractors State License Board would like to know your assessment of this publication, *Home Improvement Contracts: Putting the pieces together*. Please take a moment to answer the following questions by circling one of the numbers for each item:

1. Did you find this publication informative?

VERY INFORMATIVE NOT INFORMATIVE
10 9 8 7 6 5 4 3 2 1

2. Did the text answer your questions?

ALMOST ALL ALMOST NONE
10 9 8 7 6 5 4 3 2 1

3. Was the writing easy to understand?

VERY EASY VERY DIFFICULT
10 9 8 7 6 5 4 3 2 1

4. Anything you think should be included or covered better? _____

5. Other comments. _____

Order Form

The following publications are available free of charge from the Contractors State License Board. Just FAX this form to (916) 255-1395, or mail it to:

CSLB Publications
P. O. Box 26000
Sacramento, CA 95826

Name: _____

Address: _____

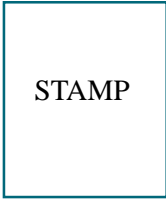
QUANTITY Booklets

- _____ *Blueprint for Becoming a California Licensed Contractor*
_____ *What You Should Know Before You Hire a Contractor*
_____ *Home Improvement Contracts: Putting the pieces together*
_____ *Mandatory Arbitration Program Guide (complaints \$5,000 or less)*
_____ *Voluntary Arbitration Program Guide (complaints between \$5,000-\$50,000)*
_____ *A Consumer Guide to Asbestos*

Pamphlets

- _____ *What You Should Know Before You Hire a Contractor* (_____ English _____ Spanish)
_____ *A Consumer Guide to Filing Construction Complaints* (_____ English _____ Spanish)
_____ *Building Your Career as a Licensed Contractor*
_____ *A Guide to Contractor License Bonds*
_____ *Advertising Do's & Don'ts for Contractors*
_____ *After a Disaster*

You may also check CSLB's website, www.cslb.ca.gov, where a publication order form and selected publications are available on-line.



CSLB Publications
P. O. Box 26000
Sacramento, CA 95826

Index

Arbitration

CSLB arbitration 12
private arbitration notice 13

Bonds

joint control 19
joint control addendum 20
notice 19

Canceling

Business & Professions Code 7163 24
home solicitation sales act 21
notice of cancellation 22
notice of right to cancel 25
swimming pool contracts 24
truth in lending 23

Change orders

requirements 15

Commencement of work 14

Contractors

definition 4
top reasons for license revocation 4

Contracts

consent 8
definition 4

CSLB

resources 26-28

Home improvement

definition 5
examples 5

Home improvement contract

definition 6
in writing 11
laundry list of items required 7
time and materials contracts 6
top ten problems with 6

Joint control 19

joint control addendum 20

Liens 18

lien contracts sold door-to-door 8
mechanics' liens 9
Notice to Owner 10

Notices

arbitration notice 13
required for residential property
with four or fewer units 9
required for disciplined contractors 9
required prior to contracting 8-10
right to cancel 25
statement regarding
where to file complaint 11

Payment

bonds 19
down payment 17
joint control 19
sales commission 18
schedule of payments 17
truth in lending 23

Index

Continued

Price

agreed price 17
down payment 17

Publications

order form 29
permission *inside front cover*

Quick quiz 2

Resources

automated phone response system 27
CSLB 26-28
books 26
internet 27
legal assistance 27
publication order form 29
stationery stores 26
trade associations 26

Salesperson

contract information 11
sales commission 18

Survey 29

Swimming pool

cancellation of contracts 24
down payment 17

Warranties

express, written 11
patent defects 11
latent defects 12

Work

commencement of 14
description in contract 14